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RECEIVED
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SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2013 JUL -5 AM 10: 18

In the Matter Of)
)
MUR 6637)
www.wipeupthemess.com)
Kovach for Congress, Inc. and)
Christopher M. Marston as Treasnrer)
Kevin Anglim)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Federal Election Commission (the "Commission") uses forreal snoring criteria as a basis to allocate its resuroes and decide which matters to pursue. These criteria include without limitation an asscssment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Office of General Counsel ("OGC") has determined that MUR 6637 should not be referred to the Alternative Dispute Resolution Office. Also, for the reasons set forth below, OGC recommends that the Commission find no reason to believe with regard to all Respondents in MUR 6637.¹

¹ Complaint Filed: September 4, 2012.
Amended Complaint filed: September 10, 2012. www.wipeupthemess.com (Buchta) Response Filed: September 20, 2012. Anglim Response Filed: October 17, 2012. Kovach Committee Response Filed: November 28, 2012.

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1 In this matter, Complainant Kevin Izzo, treasurer of Rose Izzo for Congress, alleges that
2 a website (www.wipeupthemess.com) that included statements in opposition to Rose Izzo's
3 campaign for Congress did not contain a necessary disclaimer. Compl. at 1. Specifically, he
4 alleges that the website was a "political ad" and failed to identify "who is responsible for" the
5 website. *Id.* In an amendment to the Complaint, Izzo alleges that Kovach for Congress, Inc.,
6 (the "Committee"), through a paid staffer, was responsible for the website. Amd. Compl. at 1.
7 Izzo reaches that conclusion because the staffer, Kevin Anglim, posted two Facebook comments
8 that linked to www.wipeupthemess.com. *Id.* at 1.

9 On September 20, 2012, an individual named Ray Buchta filed a response, stating that
10 "WipeUpTheMess.com is [his] personal website. It was not authorized by or paid for by any
11 candidate or committee." Buchta Resp. at 1. Buchta states that he was under the impression that
12 "uncompensated individuals may engage in Internet activities for the purpose of influencing a
13 federal election without restriction" and cites to 11 CFR §§ 100.94 and 100.155. *Id.* Buchta
14 argues that the "internet exemption" includes "creating, maintaining or hosting a web site and
15 paying a nominal fee for the use of a web site. 11 CFR 100.94(b)." *Id.* Buchta further asserts
16 that Commission regulations "clearly make a distinction between internet activities (such as
17 websites) and traditional advertising (such as TV, radio and print ads). No money other than
18 nominal fees was spent on this website. I did not spend any money promoting the website." *Id.*

19 Kevin Anglim filed a response on October 17, 2012. He acknowledges that he worked
20 for the Kovach campaign but denied any involvement with www.wipeupthemess.com. Anglim
21 Resp. at 1. Anglim states that he last worked for the campaign the week of August 12-18 and
22 that he was not in contact with the campaign afterward. *Id.* Regarding the Facebook posts that
23 he made, Anglim states that he discovered the website independently and that the Facebook posts

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1 “were [his] personal decision and personal opinion. The Kovach campaign did not know I was
2 engaging in these posts.” *Id.*

3 In its Response, the Committee asserts that “www.WipeUpTheMess.com was not created
4 by, sponsored by, or affiliated with the Kovach campaign” and that “the Kovach Campaign does
5 not know who created it.” Committee Resp. at 2. Additionally, the Committee notes that
6 Anglim made his Facebook posts after he left the campaign. *Id.* The Committee asserts that at
7 the time of the posts Anglim “was not working as a representative of the campaign and any
8 actions he undertook were purely his own and not the actions of the Kovach Campaign.” *Id.*
9 Additionally, the Committee asserts that, because a post on Facebook is not a public
10 communication, no disclaimer was required. *Id.* at 1.

11 “[P]ublic communications . . . by a political committee” and public communications “by
12 any person that expressly advocate the election or defeat of a clearly identified candidate”
13 require disclaimers, as do “all Internet websites of political committees available to the general
14 public.” See 11 C.F.R. § 110.11(a)(1)-(2). A “public communication” is defined as a
15 communication by means of any broadcast, cable, or satellite communication, newspaper,
16 magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or
17 any other form of “general public political advertising.” 11 C.F.R. § 100.26. The term “general
18 public political advertising,” however, expressly excludes “communications over the Internet,
19 except for communications placed for a fee on another person’s Web site.” *Id.*

20 We conclude that the website was neither a public communication nor a political
21 committee website. The Committee asserts that the website was not created by, sponsored by, or
22 affiliated with the Kovach campaign. Committee Resp. at 1. Anglim asserts that he had no
23 involvement with the website and that he merely referenced it in two Facebook posts—after he

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1 left the Kovach campaign. Anglim Resp. at 1. And Buchta states that www.wipeupthemess.com
2 was his "personal website," Buchta Resp. at 1; he thus did not place a communication "on
3 *another person's* Web site."² 11 C.F.R. § 100.26 (emphasis added); *see also* Internet
4 Communications, 71 Fed. Reg. 18589, 18607-10 (Apr. 12, 2006) (explaining the distinction
5 between paying a fee to post a message on one's own website and another's website). Because
6 the website was neither a political committee's nor qualified as a public communication, the
7 website did not require a disclaimer.

8 Accordingly, the Office of General Counsel recommends the Commission find no reason
9 to believe that www.wipeupthemess.com and Ray Buchta; Kovach for Congress, Inc. and
10 Christopher M. Marston as treasurer; and Kevin Anglim, violated the Act or Commission
11 regulations with respect to the allegations in this matter. This Office also recommends the
12 Commission approve the attached Factual & Legal Analysis and the appropriate letters, and close
13 the file.
14

² Moreover, Buchta's volunteer activity falls under the definition of uncompensated internet activity and does not constitute a contribution or expenditure. *See* 11 C.F.R. §§ 100.94, 100.155.

RECOMMENDATIONS

1. Find no reason to believe ~~www.wipeupthemess.com~~ and Ray Buchta violated the Act or Commission regulations with respect to the allegations in this matter;
2. Find no reason to believe Kovach for Congress, Inc., and Christopher M. Marston as treasurer, violated the Act or Commission regulations with respect to the allegations in this matter;
3. Find no reason to believe Kevin Anglim violated the Act or Commission regulations with respect to the allegations in this matter
4. Approve the attached Factual & Legal Analyses and the appropriate letters; and
5. Close the file.

Anthony Herman
General Counsel

7/3/13
Date

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